

ARKANSAS SUPREME COURT

Nos. 07-280

OMAR HILL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 3, 2007

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF LEE COUNTY, CV 2006-
93, HON. HARVEY YATES, JUDGE]

MOTION DENIED.

PER CURIAM

Petitioner Omar Hill was found guilty in 2003 of aggravated robbery and theft of property. He was sentenced as a habitual offender to an aggregate term of 396 months' imprisonment. The Arkansas Court of Appeals affirmed. *Hill v. State*, CACR 03-620 (Ark. App. Apr. 7, 2004).

In 2006, petitioner filed in the county in which he was incarcerated a pro se petition for writ of habeas corpus. The court denied the petition on October 4, 2006. No appeal was taken, and petitioner now seeks leave to proceed with a belated appeal from the order pursuant to Ark. R. App. P.–Crim. 2(e).

We need not consider petitioner's reasons for failing to perfect an appeal because it is clear from the record that the habeas petition was wholly without merit. This court has consistently held that an appeal of a postconviction order, including an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the petitioner could not prevail.

Pardue v. State, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a showing, by affidavit or other evidence, of probable cause to believe he is illegally detained. Ark. Code Ann. 16-112-103 (1987); see *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989), see also *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Appellant asserted in the habeas petition that: (1) certain witnesses at his trial were not credible; (2) the admission of in-court identifications of him was illegal; (3) certain conduct by the police department during its investigation denied him a fair trial and his Sixth Amendment right to counsel; (4) certain newspaper clippings appended to the habeas petition contained information that cast doubt on his guilt; (5) certain witnesses could have been impeached or their testimony was subject to a motion to strike; (6) his conviction resulted from mistaken identification of him as the perpetrator of the offenses and he was thus denied his Fourteen Amendment right to due process of law. Petitioner did not contend that the trial court was without jurisdiction or that the commitment was invalid on its face. None of the claims, all which amounted to an attack of the sufficiency of the evidence, was sufficient to make such a showing. As appellant clearly failed to meet his burden of showing by affidavit or other evidence of probable cause to believe that he was illegally detained, he was not entitled to a writ of habeas corpus and there is no good cause to allow a belated appeal

from the court's order denying the writ.

Motion denied.